

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

| | | |
|----------------------------------|---|---------------------------------|
| ALLIE FOSTER, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| VS. |) | No. 3:11-CV-00367 |
| |) | JUDGE NIXON |
| WAL-MART STORES EAST, LP, |) | MAGISTRATE JUDGE GRIFFIN |
| |) | JURY DEMAND |
| Defendant. |) | |

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant Wal-Mart Stores East, LP, moves the Court for summary judgment as to all claims asserted against it pursuant to Fed. R. Civ. P. 56.

This is a premises liability case.

Plaintiff brought this action to recover for injuries allegedly sustained on March 10, 2010, when she tripped and fell on a pallet at the end of an aisle at a Wal-Mart retail store located in Murfreesboro, Tennessee.

GROUND

Wal-Mart is entitled to summary judgment because plaintiff cannot establish that (1) Wal-Mart had a duty to remove or warn of any danger posed by the pallet, or that (2) Wal-Mart caused plaintiff to fall.

Additionally, Wal-Mart is not liable to plaintiff because plaintiff's comparative fault caused the accident and bars plaintiff's claims.

There is no genuine dispute as to any material fact, and Wal-Mart is entitled to judgment as a matter of law.

SUPPORTING DOCUMENTS

In support of this motion, Wal-Mart submits a memorandum of law, a statement of material facts, excerpts from plaintiff Allie Foster's deposition, pp. 18, 28-29, 32, 43-54, 59-67, and Exhibits 1-3 (Exhibit A) and the Affidavit of Tim Fox (Exhibit B)¹.

The following unpublished opinions are attached to the memorandum of law in support of this motion:

____ (1) Norfleet v. Pulte Homes Tennessee Ltd. Partnership, 2011 WL 5446068 (Tenn. Ct. App. Nov. 9, 2011);

(2) Arrambide v. Wal-Mart Stores, Inc., 33 Fed. Appx. 199 (6th Cir. 2002).

(3) Young v. First Bank of Tennessee, 2011 WL 332700 (Tenn. Ct. App. Jan. 28, 2011);

(4) Stewart v. Seton Corp., 2008 WL 426458 (Tenn. Ct. App. Feb. 12, 2008); and

(5) Herbison v. Hanson Chrysler Plymouth, Inc., 1998 WL 485668 (Tenn. Ct. App. Aug. 19, 1998).

¹The video surveillance DVD attached to this affidavit will be filed manually with the Court. See Notice of Manual Filing filed contemporaneously with this motion.

s/Susan VanDyke
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served via the Electronic Filing System upon John D. Drake, attorney for plaintiff, 120 East Main Street, 3rd Floor, Bank of America, Murfreesboro, TN 37130, on this the 28th day of December, 2011.

s/Susan VanDyke
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